IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No.1174 of 2002

Date of decision 12.6.2007

Ashwani Kumar Petitioner

Vs.

Union of India and anr. Respondents

Coram:

The Hon'ble Mr.Justice Rajiv Sharma,J.

Whether approved for reporting?[1] Yes

For the Petitioner: Mr. Ashutosh Burathoki, Advocate.

For the Respondents: Mr.Sandeep Sharma, Assistant Solicitor General of India.

Rajiv Sharma, J.

The brief facts which can be culled out from the pleadings of the respective parties are that the petitioner was enrolled in the Border Security Force in "A-Coy. Of 107 Bn. Border Security Force." Ms.Kusum petitioner's wife had filed a suit for the grant of decree for declaration to the effect that she was the legally wedded wife of the petitioner and the petitioner has no right, title or interest to solemnize second marriage during her life time or till the decree of divorce is not passed by the court of competent jurisdiction and the marriage of the parties is not dissolved with a consequential relief of permanent and prohibitory injunction restraining the petitioner from solemnizing second marriage till the decree of divorce is not passed by the court of competent law and the marriage of the parties is not dissolved. The suit was compromised on 29.1.1995 and the order is reproduced below for better appreciation of the facts:

> "The learned counsel for the parties, present in the Court have been motivated for conciliation for which they have agreed. Their statements have been recorded separately to the factum of

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[1] Whether reporter of local papers are allowed to see the judgment ? Yes

> compromise arrived at between the parties. In view of the statements of the learned counsel for the parties, the defendant shall not contract second marriage till he obtains divorce from the plaintiff in accordance with law. The suit stands decreed as compromised. ….”

The petitioner’s wife Ms.Kusum had submitted a complaint to the authorities on 14.9.1998 (Annexure R-1) for initiating action against the petitioner for contracting second marriage during life time of his first wife without obtaining legal divorce from the first wife. He was served with a show cause notice 25.10.1999 calling upon him why disciplinary action shall not be instituted against him for entering into second marriage while first wife was alive. He filed a detailed reply to the show cause notice on 28.10.1999 and has denied the allegation of contracting second marriage.

It appears that on the basis of the complaint dated 14.9.1998 the Officiating Commandant, 107 BN BSF has sent a communication vide a letter dated 4.1.1999 to the Senior Superintendent of Police, District Kangra for police verification. The Superintendent of Police, Kangra at Dharamshala has sent a letter to the Commandant 107 BN BSF on 1.4.1999 along with photo copies of investigation report of police and certificate of Gram Panchayat. The Commandant 107 Bn. BSF has called upon the Senior Superintendent of Police District Kangra in the month of April, 1999 for giving correct date of marriage contracted by the petitioner. The Superintendent of Police, Kangra at Dharamshala has sent a letter to the Commandant on 24.11.1999 along with report of Pradhan, Gram Panchayat , Sungal and Numberdar Padiarkhar, Tehsil Palampur. He was discharged from service vide order dated 6.12.1999 on the ground of unsuitability under rule 26 of the BSF Rule 1969.

Mr.Ashutosh Burathoki, learned counsel for the petitioner had strenuously argued that a regular inquiry was to be instituted before the issuance of order dated 6.12.1999 and rule 26 of BSF Rule 1969 was not attracted in this case. Mr. Sandeep Sharma, learned Assistant Solicitor

General of India for the respondents had supported the order dated 6.12.1999.

I have heard the learned counsel for the parties and also perused the record.

The foundation for issuance of show cause notice to the petitioner on 25.10.1999 is the complaint of Smt.Kusum dated 14.9.1998. He had replied to the show cause notice denying the factum of contracting second marriage. The order dated 6.12.1999 is based on the report of the Senior Superintendent of Police, District Kangra dated 24.11.1999. Mr.Burathoki submitted that his client was not associated at the time of inquiry-investigation carried out by the police of district Kangra. He also contended that the reply furnished by his client has not been taken into consideration except one observation that the same was not found convincing. It will be apt to reproduce Rule 26 of the BSF Rule 1969 which reads as under:

> " **26. Retirement of enrolled persons on grounds of unsuitability**.- Where a Commandant is satisfied that an enrolled person is unsuitable to be retained in the Force the Commandant may, after giving such enrolled person an opportunity of showing cause (except where he considers it to be impracticable to give such opportunity),retire from the Force the said enrolled person."

From perusal of above quoted rule it is evident that the Commandant if satisfied that enrolled person is unsuitable to be retained in the force, the Commandant may, after giving such enrolled person an opportunity of show cause, retire from the service the said enrolled person. But in the present case the petitioner has been discharged from service which is not stipulated under rule 26.The show cause notice has been issued to the petitioner under rule 7 of the Border Security Force,Rules,1969 read with CCS Conduct Rule 21. The procedure for termination of service finds mention in Chapter IV of the Border Security

Force Rules, 1969. The procedure for termination of service on misconduct is specifically dealt with under Rule 20 which reads as under :

"**20. Termination of service for misconduct**.-(1) Where in the opinion of the Director General a person subject to the Act has conducted himself in such manner, whether or not such conduct amounts to an offence, as would render his retention in service undesirable and his trial by Security Force Court inexpedient, the Director General may inform the person concerned accordingly.

(2) The Director General shall further inform the person concerned that it is proposed to terminate his services either by way of dismissal or removal.

(3) The Director General shall furnish the particulars of allegations and the report of investigation (including the statement of witnesses, if any, recorded and copies of documents, if any, intended to be used against him) in cases where allegations have been investigated:

Provided that where the allegations have not been investigated, the Director General shall furnish to the person concerned the names of witnesses with a brief summary of the evidence and copies of documents, if any, in support of the allegations.

(4) Notwithstanding the provisions of sub-rule (3) where it would not be in public interest to disclose the evidence or the documents, it shall be lawful for the Director General to withhold copies of such evidence or documents from the person concerned.

(5) Where any evidence or document is withheld under sub-rule (4) the Director General shall record the nature of the evidence or the document withheld and forward the same to the Central Government together with the reasons for withholding such evidence or document.

(6) The person concerned shall within seven days from the receipt of information furnished to him under sub rule (3) inform, in writing, the Director General:-

(a) his acceptance or denial of the allegations;

(b) any material or evidence he wishes to be considered in his defence;

(c) names of witnesses whom he wishes to cross-examine; and

(d) names of witnesses whom he wishes to examine in his defence.

(7) Where the person concerned has expressed a wish to cross-examine any witness or to produce witness in defence, the Director General shall appoint an enquiry officer who shall be an officer superior to the person against whom it is proposed to take action and has not taken any part previously in the investigation into the matter.

(8) Where any complaint has been received by the Central Government against a person subject to the Act that he has conducted himself in such manner as would render his retention in service undesirable, the Central Government may require the Director General to take necessary action in this behalf in accordance with the provisions of the foregoing sub rules."

Rule 21 prescribes the procedure before the Enquiry Officer which reads as under:

"**21. Procedure before the Enquiry Officer**.-(1) The Director General may appoint an officer of the Force to be the conducting officer for the purposes of presenting the case before the enquiry officer and it shall be the duty of the conducting officer to procure the attendance of witnesses.

(2) No counsel or legal practioner shall be allowed to appear before the enquiry officer.

(3) The evidence of witnesses shall be taken on oath and the conducting officer shall have the right to cross-examine or re-examine witnesses and to call witnesses in rebuttal.

(4) The enquiry officer shall ordinarily examine only such witnesses whose names have been disclosed under clauses (c) and (d) of sub-rule 6 of rule 20, but if the interest of justice so require, the inquiry officer may permit the person whose conduct is under enquiry, to call additional witnesses:

Provided that, if the enquiry officer considers that the evidence likely to be given by a witness would not materially assist in the determination of the issues, he may refuse to examine such a witness.

(5) The enquiry officer shall sit from day to day till the whole evidence has been recorded:

Provided that, if the interests of justice so require, he may for reasons to be recorded in writing adjourn for a reasonable time.

(6) (a) The enquiry officer shall, immediately after the termination of the enquiry, transmit his finding along with the evidence recorded, to the Deputy Inspector General under whom the person whose conduct is under enquiry was serving at the time of the alleged misconduct.

(b) The Deputy Inspector General shall forward the proceedings together with his opinion thereon to the Inspector General concerned who may record his opinion and transmit the proceedings to the Director General.

(7) The decision of the enquiry officer as to the admissibility of evidence, allowing or disallowing any question, calling or refusing to call any witness, adjourning or refusing to adjourn or on any other incidental question shall be final."

The imposition of penalty is enumerated under rule 22 which reads as under :

"**22. Imposition of penalty**.-(1) After going through the allegations against the person intended to be dismissed or removed, his defence, and the proceedings of enquiry if any, the Director General shall if the case has been initiated by the Central Government, and, may, in other cases, make his recommendation to the Central Government and that Government may dismiss or remove such a person.

(2) If the central Government considers that the allegations are proved but dismissal or removal would be too severe a punishment, it may order:

(i) the retirement of the officer; or

(ii) imposition of the penalty of forfeiture of service for purposes of promotion or seniority; or

(iii) may order the withholding of increments or any other punishment which would be sufficient to meet the ends of justice.

(3) The Director General, an Inspector General or a Deputy Inspector General before dismissing or removing from the service a person subject to the Act shall comply, as far as

applicable, with the provisions of rules 20,21 and sub-rule (2) of this rule:

Provided that a Deputy Inspector General shall not dismiss or remove a subordinate officer of the rank of Subedar (Inspectror).

Admittedly the procedure as quoted above has not been followed before the issuance of order dated 6.12.1999. The charges levelled against the petitioner were serious in nature and had to be gone into after the denial of the same by him in a properly constituted enquiry. The petitioner after issuance of charge sheet was to be granted sufficient time to file a reply to the same. Thereafter the enquiry officer was to be appointed and during the course of enquiry the petitioner was to be afforded opportunity to project his case. Thereafter the evidence was to be taken into consideration, oral as well as documentary, by the enquiry officer and thereafter copy of the enquiry report was to be supplied to the petitioner to point out the shortcomings or discrepancies during the course of inquiry and only thereafter the Disciplinary Authority could impose penalty upon him.

In **Union of India v. T.R. Verma,** A.I.R. 1957 S.C. 882 the Apex Court has held that :-

"Stating it broadly and without intending it to be exhaustive, it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them."

The expression 'reasonable opportunity' has been explained by the Apex Court in **M/s. Fedco (P) Ltd. and another v. S.N. Bilgrami and others,** AIR 1960 Supreme Court 415 as under:-

"The requirement that a reasonable opportunity of being heard must be given has two elements. The first is that an opportunity to be heard must be given; the second is that this opportunity must be

reasonable. Both these matters are justiciable and it is for the Court to decide whether an opportunity has been given and whether that opportunity has been reasonable. In the present case, a notice to show cause against the proposed order was given; it was stated in the notice that the ground on which the cancellation was proposed was that the licences had been obtained fraudulently; and later on a personal hearing was given. It must therefore be held that the requirement that an opportunity to be heard must be given was satisfied. What the petitioners' Counsel strenuously contends however that is though an opportunity was given that opportunity was not reasonable. In making this argument he had laid special stress on the fact that particulars of the fraud alleged were not given and an opportunity to inspect the papers though repeatedly asked for was not given. It is now necessary to consider all the circumstances in order to arrive at a conclusion whether the omission to given particulars of fraud and inspection of papers deprived the petitioners of a reasonable opportunity to be heard.

There can be no invariable standard for "reasonableness" in such matters except that the Court's conscience must be satisfied, that the person against whom an action is proposed has had a fair chance of convincing the authority who proposes to take action against him that the grounds on which the action is proposed are either non-existent or even if they exit they do not justify the proposed action. The decision of this question will necessarily depend upon the peculiar facts and circumstances of each case, including the nature of the action proposed, the grounds on which the action is proposed, the material on which the allegations are based, the attitude of the party against whom the action is proposed in showing cause against such proposed action, the nature of the plea raised by him in reply, the requests for further opportunity that may be made, his admissions by conduct or otherwise of some or all the allegations and all other matters which help the mind in coming to a fair conclusion on the question."

The Apex Court in **State of Orissa v. Dr. (Miss) Binapani Dei and others,** AIR 1967 Supreme Court 1269 has held that even an administrative order which involves civil consequences, has to be passed consistently with the rule of natural justice. Their Lordships have held as under:-

"It is true that some preliminary enquiry was made by Dr. S. Mitra. But the report of that Enquiry Officer was never disclosed to the first respondent. Thereafter the first respondent was required to show cause why April 16, 1907, should not be accepted as the date of birth and without recording any evidence the order was passed. We think that such an enquiry and decision were contrary to the basic concept of justice and cannot have any value. It is true that the order is administrative in character, but even an administrative order while involves civil consequences, as already stated, must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence. No such steps were admittedly taken, the High Court was, in our judgment, right insetting aside the order of the State."

The Apex Court in a land mark judgment in **A.K. Kraipak and others v. Union of India and others,** AIR 1970 SC 150 has held that the aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. The Supreme Court has opined as under:-

"The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought (1) no one shall be a judge in his own cause (*Nemo debet ess judex propria causa*), and (2) no decision shall be given against a party without affording him a reasonable hearing (*audi alteram partem*). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is not questioned. If the purpose of the rules of natural

justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry. As observed by this Court in Suresh Koshy George v. University of Kerala, Civil Appeal No.990 of 1968, D/-15-7-1968 = (AIR 1969 SC 198) the rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the frame-work of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case."

The Apex Court in **The Managing Director, U.P. Warehousing Corporation and others versus Vijay Narayan Vajpayee,** A.I.R. 1980 Supreme Court 840 has held that dismissal of the employee of U.P. Warehousing Corporation in total breach of natural justice was illegal. The Supreme Court has opined as under:-

"The appellant is a Corporation constituted under the Madhya Pradesh State Warehousing Corporation Act (28 of 1956), which was subsequently replaced by the Madhya Pradesh Act 58 of 1962. It is a statutory body wholly controlled and managed by the Government. Its status is analogous to that of the Corporations which were under consideration in Sukhdev Singh's case (ibid). The ratio of Sukhdev Singh's case, therefore, squarely applies to the present case. Even if at the time of the dismissal, the statutory regulations had not been framed or had not come into force, then also, the employment of the respondent was public employment and the statutory body, the employer could not terminate the services of its employee without

due enquiry in accordance with the statutory Regulations, if any in force, or in the absence of such Regulations, in accordance with the rules of natural justice. Such an enquiry into the conduct of a public employee is of a quasi-judicial character. The respondent was employed by the appellant-Corporation in exercise of the powers conferred on it by the statute which created it. The appellants' power to dismiss the respondent from service was also derived from the statute. The Court would therefore, presume the existence of a duty on the part of the dismissing authority to observe the rules of natural justice, and to act in accordance with the spirit of Regulation 16, which was then on the anvil and came into force shortly after the impugned dismissal. The rules of natural justice in the circumstances of the case, required that the respondent should be given a reasonable opportunity to deny his guilt, to defend himself and to establish his innocence which means and includes an opportunity to cross-examine the witnesses relied upon by the appellant-Corporation and an opportunity to lead evidence in defence of the charge as also a show cause notice for the proposed punishment. Such an opportunity was denied to the respondent in the instant case. Admittedly, the respondent was not allowed to lead evidence in defence. Further, he was not allowed to cross-examine certain persons whose statements were not recorded by the Enquiry Officer (opposite party No.1) in the presence of the respondent. There was controversy on this point. But it was clear to the High Court from the report of enquiry by the Opposite Party No.1 that he relied upon the reports of some persons and the statements of some other persons who were not examined by him. A regular departmental enquiry takes placed only after the charge-sheet is drawn up and served upon the delinquent and the latter's explanation is obtained. In the present case, no such enquiry was held and the order of dismissal was passed summarily after perusing the respondent's explanation. The rules of natural justice in this case were honoured in total breach. The impugned order of dismissal was thus bad in law and had been rightly set aside by the High Court."

The Apex Court in **S.L. Kapoor versus Jagmohan and Others,** (1980) 4 SCC 379 has held that non-observance of natural justice is itself a prejudice caused. The Apex Court has also laid down in this judgment that merely because the facts are admitted or

are undisputable, it does not follow that natural justice need not be observed. Their Lordships of the Hon'ble Supreme Court have opined as under:-

"The matter has also been treated as an application of the general principle that justice should not only be done but should be seen to be done. Jackson's Natural Justice (1980 Edn.) contains a very interesting discussion of the subject. He says:

> The distinction between justice being done and being seen to be done has seen emphasized in many cases . . . . . .
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> The requirement that justice should be seen to be done may be regarded as a general principle which in some cases can be satisfied only by the observance of the rules of natural justice or as itself forming one of those rules. Both explanations of the significance of the maxim are found in Lord Widgery C.J.'s judgment in R. v. Home Secretary, ex. P. Hosenball, where after saying that "the principles of natural justice are those fundamental rules, the breach of which will prevent justice from being seen to be done" he went on to describe the maxim as "one of the rules generally accepted in the bundle of the rules making up natural justice".
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> It is the recognition of the importance of the requirement that justice is seen to be done that justifies the giving of a remedy to a litigant even when it may be claimed that a decision alleged to be vitiated by a breach of natural justice would still have been reached had a fair hearing been given by an impartial tribunal. The maxim is applicable precisely when the court is concerned not with a case of actual injustice but with the appearance of injustice or possible injustice. In Altco Ltd. v. Sutherland Donaldson, J., said that the court, in deciding whether to interfere where an arbitrator had not given a party a full hearing was not concerned with whether a further hearing would produce a different or the same result. It was important that the parties should not only be given justice, but, as reasonable men, know that they had had justice or "to use the time hallowed phrase" that justice should not only be done but be seen to be done. In R. v. Thames Magistrates' Court, ex. P. Polemis, the applicant obtained an order of certiorari to

quash his conviction by a stipendiary magistrate on the ground that he had not had sufficient time to prepare his defence. The Divisional Court rejected the argument that, in its discretion, it ought to refuse relief because the applicant had no defence to the charge.

> It is again absolutely basic to our system that justice must not only be done but must manifestly be seen to be done. If justice was so clearly not seen to be done, as on the afternoon in question here, it seems to me that it is no answer to the applicant to say: 'Well, even if the case had been properly conducted, the result would have been the same'. That is mixing up doing justice with seeing that justice is done (per Lord Widgery C.J. at page 1375).

In our view the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It ill comes from a person who has denied justice that the person who has been denied justice is not prejudiced. As we said earlier where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because courts do not issue futile writs. We do not agree with the contrary view taken by the Delhi High Court in the judgment under appeal.

Therefore, merely because facts are admitted or are indisputable it does not follow that natural justice need not be observed."

The Apex Court in **D.K. Yadav versus J.M.A. Industries Ltd.,** (1993) 3 SCC 259 has held that action of the authority should be impartial and should be free from even appearance of unfairness, unreasonableness and arbitrariness. The Supreme Court has held that the procedure prescribed for depriving a person of livelihood will be liable to be tested on the anvil of Article 14. Their Lordships of

Supreme Court have opined as under on the principle of reasonable opportunity to be afforded to an employee:-

"The cardinal point that has to be borne in mind, in every case, is whether the person concerned should have a reasonable opportunity of presenting his case and the authority should act fairly, justly, reasonably and impartially. It is not so much to act judicially but is to act fairly, namely, the procedure adopted must be just, fair and reasonable in the particular circumstances of the case. In other words application of the principles of natural justice that no man should be condemned unheard intends to prevent the authority from acting arbitrarily affecting the rights of the concerned person.

It is a fundamental rule of law that no decision must be taken which will affect the right of any person without first being informed of the case and giving him/her an opportunity of putting forward his/her case. An order involving civil consequences must be made consistently with the rules of natural justice. In Mohinder Singh Gill v. Chief Election Commissioner the Constitutional bench held that 'civil consequence' covers infraction of not merely property or personal right but of civil liberties, material deprivations and non-pecuniary damages. In its comprehensive connotation very thing that affects a citizen in his civil life inflicts a civil consequence. Black's Law Dictionary, 4th edn., page 1487 defined civil rights are such as belong to every citizen of the state or country … they include … rights capable of being enforced or redressed in a civil action …. In State of Orissa v. (Miss) Binapani Dei this Court held that even an administrative order which involvers civil consequences must be made consistently with the rules of natural justice. The person concerned must be informed of the case, the evidence in support thereof supplied and must be given a fair opportunity to meet the case before an adverse decision is taken. Since no such opportunity was given it was held that superannuation was in violation of principles of natural justice.

In State of W.B. v. Anwar Ali Sarkar per majority, a seven-Judge Bench held that the rule of procedure laid down by law comes as much within the purview of Article 14 of the Constitution as any rule of substantive law. In Maneka Gandhi v. Union of India another Bench of seven Judges held that the substantive procedural laws and action taken under them will have to pass the test under Article 14.

The test of reason and justice cannot be abstract. They cannot be divorced from the needs of the nation. The tests have to be pragmatic otherwise they would cease to be reasonable. The procedure prescribed must be just, fair and reasonable even though there is no specific provision in a statute or rules made there under for showing cause against action proposed to be taken against an individual, which affect the right of that individual. The duty to give reasonable opportunity to be heard will be implied from the nature of the function to be performed by the authority which has the power to take punitive or damaging action. Even executive authorities which take administrative action involving any deprivation of or restriction on inherent fundamental rights of citizens, must take care to see that justice is not only done but manifestly appears to be done. They have a duty to proceed in a way which is free from even the appearance of arbitrariness, unreasonableness or unfairness. They have to act in a manner which is patently impartial and meets the requirements of natural justice.

The law must therefore be now taken to be well-settled that procedure prescribed for depriving a person of livelihood must meet the challenge of Article 14 and such law would be liable to be tested on the anvil of Article 14 and the procedure prescribed by a statute or statutory rule or rules or orders affecting the civil rights or result in civil consequences would have to answer the requirement of Article 14. So it must be right, just and fair and not arbitrary, fanciful or oppressive. There can be no distinction between a quasi-judicial function and an administrative function for the purpose of principles of natural justice. The aim of both administrative inquiry as well as the quasi-judicial inquiry is to arrive at a just decision and if a rule of natural justice is calculated to secure justice or to put it negatively, to prevent miscarriage of justice, it is difficult to see why it should be applicable only to quasi-judicial inquiry and not to administrative inquiry. It must logically apply to both.

Therefore, fair play in action requires that the procedure adopted must be just, fair and reasonable. The manner of exercise of the power and its impact on the rights of the person affected would be in conformity with the principles of natural justice. Article 21 clubs life with liberty, dignity of person with means of livelihood without which the glorious content of dignity or person would be reduced to animal existence. When it is interpreted that the colour and content of

procedure established by law must be in conformity with the minimum fairness and processual justice, it would relieve legislative callousness despising opportunity of being heard and fair opportunities of defence. Article 14 has a pervasive processual potency and versatile quality, equalitarian in its soul and allergic to discriminatory dictates. Equality is the antithesis of arbitrariness. It is, thereby, conclusively held by this Court that the principles of natural justice are part of Article 14 and the procedure prescribed by law must be just, fair and reasonable.

It is thus well-settled law that right to life enshrined under Article 21 of the Constitution would include right to livelihood. The order of termination of the service of an employee/workman visits with civil consequences of jeopardizing not only not only his/her livelihood but also career and livelihood of dependents. Therefore, before taking any action putting an end to the tenure of an employee/workman fair play requires that a reasonable opportunity to put forth his case is given and domestic inquiry conducted complying with the principles of natural justice. In D.T.C. v. D.T.C. Mazdoor Congress the Constitution Bench, per majority, held that termination of the service of a workman giving one month's notice or pay in lieu thereof without inquiry offended Article 14. The order terminating the service of the employee was set aside.

In this case admittedly no opportunity was given to the appellant and no inquiry was held. The appellant's plea put forth at the earliest was that despite his reporting to duty on December 3, 1980 and on all subsequent days and readiness to join duty he was prevented from reporting to duty, nor was he permitted to sign the attendance register. The Tribunal did not record any conclusive finding in this behalf. It concluded that the management had power under Clause 13 of the Certified Standing Orders to terminate with the service of the appellant. Therefore, we hold that the principles of natural justice must be read into the Standing Order No.13 (2) (iv). Otherwise it would become arbitrary, unjust and unfair violating Article 14. When so read the impugned action is violative of the principles of natural justice."

The Apex Court has further expanded the principles of natural justice in **Dr. Rash Lal Yadav vesus State of Bihar and Others,** (1994) 5 SCC 267 as under:-

"The concept of natural justice is not a static one but is an ever expanding concept. In the initial stages it was thought that it had only two elements, namely, (i) no one shall be a judge I his own cause and (ii) no one shall be condemned unheard. With the passage of time a third element was introduced, namely, of procedural reasonableness because the main objective of the requirement of rule of natural justice is to promote justice and prevent its miscarriage. Therefore, when the legislature confers power in the State Government to be exercised in certain circumstances or eventualities, it would be right to presume that the legislature intends that the said power be exercised in the manner envisaged by the statute. If the statute confers drastic powers it goes without saying that such powers must be exercised in a proper and fair manner. Drastic substantive laws can be suffered only if they are fairly and reasonably applied. In order to ensure fair reasonable application of such laws courts have, over a period of time, devised rules of fair procedure to avoid arbitrary exercise of such powers. True it is, the rules of natural justice operate as checks on the freedom of administrative action and often prove time-consuming but that is the price one has to pay to ensure fairness in administrative action. And this fairness can be ensured by adherence to the expanded notion of rule of natural justice. Therefore, where a statute confers wide powers on an administrative authority coupled with wide discretion, the possibility of its arbitrary use can be controlled or checked by insisting on their being exercised in a manner which can be said to be procedurally fair. Rules of natural justice are, therefore, devised for ensuring fairness and promoting satisfactory decision-making. Where the statute is silent and a contrary intention cannot be implied the requirement of the applicability of the rule of natural justice is read into it to ensure fairness and to protect the action from the charge of arbitrariness. Natural justice has thus secured a foothold to supplement enacted law by operating as an implied mandatory requirement thereby protecting it from the vice of arbitrariness. Courts presume this requirement in all its width as implied unless the enactment supplies indication to the contrary as in the present case. This Court in A.K. Kraipak v. Union of India after referring to the observations in State of

Orissa v. Dr. (Miss) Binapani Dei observed as under: (SCC p.272, para 20)

> "The aim of the rules of natural justice is to ensure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it."

These observations make it clear that if the statute, expressly or by necessary implication omits the application of the rule of natural justice, the statute will not be invalidated for this omission on the ground of arbitrariness."

The Apex Court has further elucidated the principles of natural justice in **Kumaon Mandal Vikas Nigam Ltd. versus Girja Shankar Pant and Others,** (2001) 1 SCC 182 as under:-

"Since the decision of this Court in Kraipak case (A.K. Kraipak v. Union of India) one golden rule that stands firmly established is that the doctrine of natural justice is not only to secure justice but to prevent miscarriage of justice. What, however, does this doctrine exactly mean? Lord Reid about four decades ago in Ridge v. Baldwin very succinctly described it as not being capable of exact definition but what a reasonable man would regard as a fair procedure in particular circumstances – who then is a reasonable man – the man on the Clapham omnibus? In India, however, a reasonable man cannot but be a common man similarly placed. The effort of Lord Reid in Ridge v. Baldwin in not attributing a definite meaning to the doctrine but attributing it to be representing a fair procedure still holds good even I n the millennium year. As a matter of fact this Court in the case of Keshav Mills Co. Ltd. V. Union of India upon reliance on the attributes of the doctrine as above-stated as below: (SCC p. 387, para 8)

> *"8. The second question, however, as to what are the principles of natural justice that should regulate an administrative act or order is a much more difficult one to answer. We do not think it either feasible or even desirable to lay down any fixed or rigorous yardstick in this manner. The concept of natural justice cannot be put into a strait-jacket. It is futile, therefore, to look for definitions or standards of natural*

justice from various decisions and then try to apply them to the facts of any given case. The only essential point that has to be kept in mind in all cases is that the person concerned should have a reasonable opportunity of presenting his case and that the administrative authority concerned should act fairly, impartially and reasonably. Where administrative officers are concerned, the duty is not so much to act judicially as to act fairly. See, for instance, the observations of Lord Parker in H.K. (on infant), In re. It only means that such measure of natural justice should be applied as was described by Lord Reid in Ridge v. Baldwin case as 'insusceptible of exact definition but what a reasonable man would regard as a fair procedure in particular circumstances'. However, even the application of the concept of fair play requires real flexibility. Everything will depend on the actual facts and circumstances of a case. As Tucker, L.J. observed in Russell v. Duke of Norfolk:

> *'The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rule under which the tribunal is acting, the subject-matter that is being dealt with and so forth.' "*

While it is true that over the years there has been a steady refinement as regards this particular doctrine, but no attempt has been made and if we may say so, cannot be made to define the doctrine in a specific manner or method. Strait-jacket formula cannot be made applicable but compliance with the doctrine is solely dependent upon the facts and circumstances of each case. The totality of the situation ought to be taken note of and if on examination of such totality, it comes to light that the executive action suffers from the vice of non-compliance with the doctrine, the law courts in that event ought to set right the wrong inflicted upon the person concerned and to do so would be a plain exercise of judicial power. As a matter of fact the doctrine is now termed as a synonym of fairness in the concept of justice and stands as the most-accepted methodology of a governmental action.

While it is true that in a departmental proceeding, the disciplinary authority is the sole judge of facts and the High Court may not interfere with the factual findings but the availability of judicial review even in the case of departmental proceeding cannot be

doubted. Judicial review of administrative action is feasible and the same has its application to its fullest extent in even departmental proceedings where it is found that the recorded findings are based on no evidence or the findings are totally perverse or legally untenable. The adequacy or inadequacy of evidence is not permitted but in the event of there being a finding which otherwise shocks the judicial conscience of the court, it is a well-nigh impossibility to decry availability of judicial review at the instance of an affected person. The observations as above, however, do find some support from the decision of this Court in the case of Apparel Export Promotion Council v. A.K. Chopra.

It is a fundamental requirement of law that the doctrine of natural justice be complied with and the same has, as a matter of fact, turned out to be an integral part of administrative jurisprudence of this country. The judicial process itself embraces a fair and reasonable opportunity to defend though, however, we may hasten to add that the same is dependent upon the facts and circumstances of each individual case. The facts in the matter under consideration is singularly singular. The entire chain of events smacks of some personal clash and adaptation of a method unknown to law in hottest of haste; this is however, apart from the issue of bias which would be presently dealt with hereinafter. It is on this context, the observations of this Court in the case of Sayeedur Rehman v. State of Bihar seem to be rather apposite. This Court observed: (SCC p. 338, para 11)

> *"The omission of express requirement of fair hearing in the rules or other source of power claimed for reconsidering the order, dated 22-4-1960, is supplied by the rule of justice which is considered as an integral part of our judicial process which also governs quasi-judicial authorities when deciding controversial points affecting rights of parties."*

The Apex Court in **Canara Bank and Others versus Debasis Das and Others,** (2003) 4 SCC 557 has explained the concept, meaning, object, scope and applicability of the natural justice. Their Lordships have explained the principle in the following manner: -

> "Natural justice is another name for common-sense justice. Rules of natural justice are not codified canons. But

they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a common-sense liberal way. Justice is based substantially on natural ideas and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form.

The expression “natural justice” and “legal justice” do not present a watertight classification. It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law. As Lord Buckmaster said, no form or procedure should ever be permitted to exclude the presentation of a litigant’s defence.

The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as *audi alteram partem* rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should apprise the party determinatively of the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found its way into the “Magna Carta”. The classic exposition of Sir Edward Coke of

natural justice requires to “vocate, interrogate and adjudicate”. In the celebrated case of Cooper v. Wandsworth Board of Works the principle was thus stated: (ER p. 420)

“[E]ven God himself did not pass sentence upon Adam before he was called upon to make his defence. ‘Adam’ (says God), ‘where art thou? Hast thou not eaten of the tree whereof, I commanded thee that thou shouldest not ear?’ “

Since then the principle has been chiseled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond.

Principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice.

Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the facts and circumstances of that case, the framework of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. The expression “civil consequences” encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life.

Natural justice has been variously defined by different Judges. A few instances will suffice. In Drew v. Drew and Lebura (Macq at p.8), Lord Cranworth defined it as “universal justice”. In James Dunber Smith v. Her Majesty the Queen

(AC at p.623) Sir Robort P. Collier, speaking for the Judicial Committee of the Privy Council, used the phrase “the requirements of substantial justice”, while in Arthur John Spackman v. Plumstead District Board of Works (AC at p.240), the Earl of Selbourne, S.C. preferred the phrase “the substantial requirement of justice”. In Vionet v. Barrett (LJRD at p.41), Lord Esher, M.R. devined natural justice as “the natural sense of what is right and wrong”. While, however, deciding Hookings v. Smethwick Local Borad of Health Lord Esher, M.R. instead of using the definition given earlier by him in Vionet case chose to define natural justice as “fundamental justice”. In Ridge v. Baldwin (QB at p.578), Harman, L.J., in the Court of Appeal countered natural justice with “fair play inaction”, a phrase favoured by Bhagwati, J. in Maneka Gandhi v. Union of India. In H.K. (An Infant), Re (QB at p.630), Lord Parker, C.J. preferred to describe natural justice as “a duty to act fairly”. In Fairmount investments Ltd. v. Secy. Of State for Environment Lord Russell of Killowen somewhat picturesquely described natural justice as “a fail crack of the whip” while Geoffrey Lane, L.J. in R. v. Secy. of State for Home Affairs, ex p Hosenball preferred the homely phrase “common fairness”.

How then have the principles of natural justice been interpreted in the courts and within what limits are they to be confined? Over the years by a process of judicial interpretation two rules have been evolved as representing the principles of natural justice in judicial process, including therein quasi-judicial and administrative process. They constitute the basic elements of a fair hearing, having their roots in the innate sense of man for fair play and justice which is not the preserve of any particular race or country but is shared in common by all men. The first rule is “nemo judex in causa sua” or “nemo debet esse judex in propria causa sua” as stated in Earl of Derby’s case that is, “no man shall be a judge in his own cause”. Coke used the form “aliquis non debet esse judex in propria cause, quia non potest esse judex et pars” (Co. Litt. 1418), that is, “no man ought to be a judge in his own case, because he cannot act as judge and at the same time be a party”. The form “*nemo potest esse simul actor et judex*”, that is, “no one can be at once suitor and judge” is also at times

> used. The second rule is *"audi alteram partem*", that is, "hear the other side". At times and particularly in continental countries, the form "*audietur et altera pars*" is used, meaning very much the same thing. A corollary has been deduced from the above two rules and particularly the *audi alteram partem* rule, namely "*qui aliquid statuerit*, parte *inaudita altera acquum licet dixerit, haud acquum fecerit"* that is, "he who shall decide anything without the other side having been heard, although he may have said what is right, will not have been what is right" [see Boswel's case (Co Rep at p.52-a)] or in other words, as it is now expressed, "justice should not only be done but should manifestly be seen to be done". Whenever an order is struck down as invalid being in violation of principles of natural justice, there is no final decision of the case and fresh proceedings are left upon (sic open). All that is done is to vacate the order assailed by virtue of its inherent defect, but the proceedings are not terminated."

In the present case the petitioner has been condemned unheard. No enquiry has been instituted against him. The reply filed by him has not at all been considered by the Disciplinary Authority as is evident from Order dated 6.12.1999.The copy of the report furnished by the Senior Superintendent of Police District Kangra dated 24.11.1999 has not been made available to the petitioner. The petitioner during the course of enquiry by the police has not been associated and one sided version of the police has been believed. The petitioner had brought to the notice of the parties the compromise decree dated 29.1.1995 which was bound to be considered by the authorities concerned.

Mr.Sandeep Sharma, learned Assistant Solicitor General of India appearing on behalf of the respodnetns had strenuously argued that this Court has no jurisdiction to adjudicate upon this petition since impugned order had not been passed by the competent authority in the State of Himachal Pradesh. Mr.Ashutosh Burathoki, learned Advocate for the petitioner had submitted that this Court had the jurisdiction to adjudicate upon this petition since the part of cause of action had arisen within the

territorial jurisdiction of this Court. Mr.Burathoki further submitted that on the basis of police report sent by the Superintendent of Police Kangra at Dharamshala the impugned order had been passed.

Admittedly, the complaint has been made by Smt.Kusum dated 14.9.1998 from Village Samlena, P.O.Bhawarna, Tehsil Palampur, District Kangra,H.P., addressed to the Inspector General, BSL Frontier, Headquarter, C/o APO 56, the Commandant, 107, Bn. BSL C/o 56 APO and Inspector Vigilance, Frontier Headquarters C/o 56 APO. In sequel to the complaint made by Smt.Kusum on 14.9.1998, notice had been issued to the petitioner on 25.10.1999. The verification has been done by Kangra Police within the State of Himachal Pradesh and it is on the basis of this report dated 24.11.1999 which has originated from the territorial jurisdiction of this Court that the impugned order dated 6.12.1999 has been passed. Thus this Court is of the firm opinion that a part of cause of action has arisen within the territorial jurisdiction of this Court.

The expression “cause of action” has been explained by the Apex Court in **State of Rajasthan and others v. M/s Swaika Properties and another,** (1985) 3 SCC 217 as under :

> “ The expression ‘cause of action’ is tersely defined in Mulla’s Code of Civil Procedure:
>
> The ‘cause of action’ means every fact which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff right to relief against the defendant. The mere service of notice under Section 52(2) of the Act on the respondents at their registered office at 18-B, Brabourne Road, Calcutta i.e. within the territorial limits of the State of West Bengal, could not give rise to a cause of action within the territory unless the service of such notice was an integral part of the cause of action. The entire cause of action culminating in the acquisition of the land under Section 52(1) of the Act arose within the State of Rajasthan i.e. within the territorial jurisdiction of the Rajasthan High Court at the Jaipur Bench. The answer to the question whether service of notice is an

integral part of the cause of action within the meaning of Article 226(2) of the Constitution must depend upon the nature of the impugned order giving rise to a cause of action. The notification dated February 8,1984 issued by the State Government under Section 52(1) of the Act became effective the moment it was published in the official Gazette as thereupon the notified land became vested in the state Government free from all encumbrances. It was not necessary for the respondents to plead the service of notice on them by the Special Officer, Town Planning Department, Jaipur under Section 52(2) for the grant of an appropriate writ, direction or order under Article 226 of the Constitution for quashing the notification issued by the State Government under Section 52(1) of the Act. If the respondents felt aggrieved by the acquisition of their lands situate at Jaipur and wanted to challenge the validity of the notification issued by the State Government of Rajasthan under Section 52(1) of the Act by a petition under Article 226 of the Constitution, the remedy of the respondents for the grant of such relief had to be sought by filing such a petition before the Rajasthan High Court, Jaipur Bench where the cause of action wholly or in part arose."

Similarly, the Apex Court had explained the term 'cause of action' in **A.B.C. Laminart Pvt. Ltd. And another vs. A.P. Agencies, Salem**, (1989)2 SCC 163 as under :

" A 'cause of action means' every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff.

Under Section 20 (c) of the Code of civil Procedure subject to the limitation stated therefore, every suit shall be instituted in a court within the local limits of whose jurisdiction the cause of action, wholly or in part arises. It may be remembered that earlier Section 7 of the Act 7 of 1988 added Explanation III as under

(1) the place where the contract was made;

(2) the place where the contract was to be performed or performance thereof completed;

(3) the place where in performance of the contract any money to which the suit relates was expressly or impliedly payable.

The above Explanation III has now been omitted but nevertheless it may serve as a guide. There must be a connecting factor.

In the matter of a contract there may arise causes of action of various kinds. In a suit for damages for breach of contract the cause of action consists of the making of the contract, and of its breach, so that the suit may be filed either at the place where the contract was made or at the place where it should have been performed and the breach occurred. The making of the contract is part of the cause of action. A suit on a contract, therefore, can be filed at the place where it was made. The determination of the place where the contract was made is part of the law of contract. By making of an offer on a particular place does not form cause of action in a suit for damages for breach of contract. Ordinarily, acceptance of an offer and its intimation result in a contract and hence a suit can be filed in a court within whose jurisdiction the acceptance was communicated. The performance of a contract is part of cause of action and a suit in respect of the breach can always be filed at the place where the contract should have been performed or its performance completed. If the contract is to be performed at the place where it is made, the suit on the contract is to be filed there and nowhere else. In suits for agency actions the cause of action arises at the place where the contract of agency was made or the place where actions are to be rendered and payment is to be made by the agent. Part of cause of action arises where money is expressly or impliedly

payable under a contract. In cases of repudiation of a contract, the place where repudiation is received is the place where the suit would lie. If a contract is pleaded as part of the cause of action giving jurisdiction to the court where the suit is filed and that contract is found to be invalid such part of cause of the action disappears. The above are some of the connecting factors.

So long as the parties to a contract do not oust the jurisdiction of all the courts which would otherwise have jurisdiction to decide the cause of action under the law it cannot be said that the parties have by their contract ousted the jurisdiction of the court. If under the law several courts would have jurisdiction and the parties have agreed to submit to one of these jurisdictions and not to other or others of them it cannot be said that there is total ouster of jurisdiction. In other words, where the parties to a contract agreed to submit the disputes arising from it to a particular jurisdiction which would otherwise also be a proper jurisdiction under the law their agreement to the extent they agreed not to submit to other jurisdictions cannot be said to be void as against public policy. If on the other hand the jurisdiction they agreed to submit to would not otherwise be proper jurisdiction to decide disputes arising out of the contract it must be declared void being against public policy. Would this be the position in the instant case?

The expression cause of action has been further defined by the Apex Court **in Bloom Dekor Limited vs. Subhash Himatlal Desai and others,** (1994)6 SCC 322 as under :

"By "cause of action" it is meant every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court, (Cooke v. Gill). In other words, a bundle of facts which it is necessary for the plaintiff to prove in order to succeed in the suit. This Court had occasion to refer to the case of Cooke in A.K.Gupta and Sons Ltd. V. Damodar Valley Corpn. At page 98 it is stated thus:

"The expression 'cause of action' in the present context does not mean 'every fact which it is material to be proved to entitle the

plaintiff to succeed' as was said in Cooke v. Gill in a different context, for if it were so, no material fact could ever be amended or added and, of course, no one would want to change or add an immaterial allegation by no one would want to change or add an immaterial allegation by amendment. That expression for the present purpose only means, a new claim made on a new basis constituted by new facts. Such a view was taken in Robinson v. Unicos Property Corporation Ltd. And it seems to us to be the only possible view to take. Any other view would make the rule futile. The words 'new case' have understood to mean 'new set of ideas': Dornan v. J.W.Ellis and Co. Ltd. This also seems to us to be a reasonable view to take. No amendment will be allowed to introduce a new set of ideas to the prejudice of any right acquired by any party by lapse of time."

The Apex Court has held in **Navinchandra N. Majithia vs. State of Maharashtra and others**, (2000)7 SCC 640 that the High Court will have jurisdiction if any part of cause of action arises within the territorial limits of its jurisdiction. The Apex Court has held as under :

"Article 226 of the Constitution of India which provides the power to High Courts to issue certain writs reads as following :

"226. Power of High Courts to issue certain writs.-(1) Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition quo warranto and certiorari, or any of them for the enforcement of any of the rights conferred by Part III and for any other purpose.

(2) The power conferred by clause (1) to issue directions, or orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

(3)-(4) xxx xxx xxx

From the provision of clause (2) of Article 226 it is clear that the maintainability or otherwise of the writ petition in the High court depends on whether the cause of action for filing the same arose, wholly or in part, within the territorial jurisdiction of that court.

In legal parlance the expression "cause of action" is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a court or a tribunal; a group of operative facts giving rise to one or more bases for suing; a factual situation that entitles one person to obtain a remedy in court from another person.(Black's Law Dictionary).

In Stroud's Judicial Dictionary a "cause of action" is stated to be the entire set of facts that gives rise to an enforceable claim; the phrase comprises every fact, which, if traversed, the plaintiff must prove in order to claim judgment."

In "Words and Phrases" (4th Edn.) the meaning attributed to the phrase "cause of action" in common legal parlance is existence of those facts which give a party a right to judicial interference on his behalf.

A Bench of three learned Judges of this Court in the case of Oil and Natural Gas Commission v. Utpal Kumar Basu considered at length the question of territorial jurisdiction under Article 226(2) of the Constitution of India. Some of the relevant observations made in the judgment are extracted hereunder:

"5. Clause (1) of Article 226 begins with a non obstante clause-notwithstanding anything in Article 32—and provides that every High Court shall have power 'throughout the territories in relation to which it exercises jurisdiction', to issue any person or authority, including in appropriate cases, any Government,' within those territories' directions, orders or writs, for the enforcement of any of the rights conferred by Part III or for any other purpose. Under Clause (2) of Article 226 the High Court may exercise its power conferred by clause (1) if the cause of action, wholly or in part, had arisen within the territory over which it exercises jurisdiction, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories. On a plain reading of the aforesaid two clauses of Article 226 of the constitution it becomes clear that a High Court can exercise the power to issue directions, orders or writs for the enforcement of any

of the fundamental rights conferred by Part III of the Constitution or for any other purpose if the cause of action, wholly or in part, had arisen within the territories in relation to which it exercises jurisdiction notwithstanding that the seat of the Government or authority or the residence of the person against whom the direction, or writ is issued is not within the said territories. In order to confer jurisdiction on the High Court of Calcutta, NICCO must show that at least a part of the cause of action had arisen within the territorial jurisdiction of the Court. This is at best its case in the writ petition.

6. It is well settled that the expression 'cause of action' means that bundle of facts which the petitioner must prove, if traversed, to entitle him to a judgment in his favour by the court. In Chand Kour v. Partab Singh Lord Watson said:

> '….the cause of action has no relation whatever to the defence which may be set up by the defendant, nor does it depend upon the character of the relief prayed for by the plaintiff. It refers entirely to the ground set forth in the plaint as the cause of action, or, in other words, to the media upon which the plaintiff asks the court to arrive at a conclusion in his favour.'
>
> Therefore, in determining the objection of lack of territorial jurisdiction the court must take all the facts pleaded in support of the cause of action into consideration albeit without embarking upon an inquiry as to the correctness or otherwise of the said facts. In other words the question whether a High court has territorial jurisdiction to entertain a writ petition must be answered on the basis of the averments made in the petition, the truth or otherwise whereof being immaterial. To put it differently, the question of territorial jurisdiction must be decided on the facts pleaded in the petition. Therefore, the question whether in the instant case the Calcutta High court had jurisdiction to entertain and decide the writ petition in question even on the facts alleged must depend upon whether the averments made in paragraphs 5, 7, 18, 22, 26 and 43 are sufficient in law to establish that a part of the cause of action had arisen within the jurisdiction of the Calcutta High court."
>
> (emphasis supplied)
>
> So far as the question of territorial jurisdiction with reference to a criminal offence is concerned the main factor to be considered is the place where the alleged offence was committed.

Tested in the light of the principles laid down in the cases noted above the judgment of the High Court under challenge is unsustainable. The High Court failed to consider all the relevant facts necessary to arrive at a proper decision on the question of maintainability of the writ petition, on the proper decision on the question of maintainability of the writ petition, on the ground of

lack of territorial jurisdiction. The Court based its decision on the sole consideration that the complainant had filed the complaint at Shillong in the State of Meghalaya and the petitioner had prayed for quashing the said complaint. The High Court did not also consider the alternative prayer made in the writ petition that a writ of mandamus be issued to the State of Maghalaya to transfer the investigation to Mumbai Police. The High Court also did not take note of the averments in the writ petition that filing of the complaint at Shillong was a mala fide move on the part of the complainant to harass and pressurize the petitioners to reverse the transaction for transfer of shares. The relief sought in the writ petition may be one of the relevant criteria for consideration of the question but cannot be the sole consideration in the matter. On the averments made in the writ petition gist of which has been noted earlier it cannot be said that no part of the cause of action for filing the writ petition arose within the territorial jurisdiction of the Bombay High court.

When the Constitution was framed, Article 226, as it originally stood therein provided that

> "every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases any Government , within those territories directions, orders or writs….."

Some of the decisions rendered by different High courts during the earlier years of the post-Constitution period have given a wider perspective regarding the jurisdiction of the High Court and pointed out that a High Court can exercise powers under Article 226 even in respect of tribunals or authorities situated outside the territorial limits of its jurisdiction if such tribunal or authority exercises powers in such a manner as to affect the fundamental rights of persons residing or carrying on business within the jurisdiction of such High Court (vide K.S.Rashid Ahmed v. Income Tax Investigation Commission, M.K.Ranganathan v. Dy.Collector of Central excise and Land Customs. It was Subba Rao, J.(as the learned chief Justice then was) who observed in M.K.Rangathan case that:

> "If a tribunal or authority exercises jurisdiction within the territories effecting such rights it may reasonably be construed that the authority or the tribunal functioned within

the territorial jurisdiction of the High court and, therefore, is amenable to its jurisdiction."

But a Constitution Bench of this Court has held in Election Commission, India v. Saka Venkata Subba Rao thus:

"(The power of the High Court to issue writs under Article 226 of the Constitution is subject to the two fold limitation that such writs cannot run beyond the territories subject to its jurisdiction and the person or authority to whom the High Court is empowered to issue such writs must be amenable to the jurisdiction of the High Court either by residence or location within the territories subject to its jurisdiction."

It was the said decision of the Constitution Bench which necessitated Parliament to bring the Fifteenth Amendment to the Constitution by which clause (1-A) was added to Article 226. That clause was subsequently renumbered as clause (2) by the Constitution Forty-Second Amendment. New clause (2) of Article 226 reads thus:

"226(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories."

The object of the amendment by inserting clause (2) in the article was to supersede the decision of the Supreme Court in Election Commission v. Saka Venkata Subba Rao and to restore the view held by the High courts in the decision cited above. Thus the power conferred on the High courts under Article 226 could as well be exercised by any High Court exercising jurisdiction in relation to the territories within which "the cause of action, wholly or in part, arises" and it is no matter that the seat of the authority concerned is outside the territorial limits of the jurisdiction of that High court. The amendment is thus aimed at widening the width of the area for reaching the writs issued by different High courts.

"Cause of action" is a phenomenon well understood in legal parlance Mohapatra, J. has well delineated the import of the said expression by referring to the celebrated lexicographies. The collocation of the words "cause of

action, wholly or in part, arises" seems to have been lifted from Section 20 of the Code of Civil Procedure, which section also deals with the jurisdictional aspect of the courts. As per that section the suit could be instituted in a court within the legal limits of whose jurisdiction the "cause of action wholly or in part arises". Judicial pronouncements have accorded almost a uniform interpretation to the said compendious expression even prior to the Fifteenth Amendment of the Constitution as to mean "the bundle of facts which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court".

In Read v. Brown Lord Esher, M.R., adopted the definition for the phrase "cause of action" that it meant

> "every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court. It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved."

The Privy Council has noted in Mohd. Khalil Khan v. Mahbub Ali Mian, that the aforesaid definition adopted by Lord Esher M.R. had been followed in India. Even thereafter the courts in India have consistently followed the said interpretation without exception for understanding the scope of expression "cause of action".

Even in the context of Article 226(2) of the Constitution this Court adopted the same interpretation to the expression "cause of action, wholly or in part, arises" vide State of Rajasthan v. Swaika Properties. A three Judge Bench of this Court in Oil and Natural Gas Commission v. Utpal Kumar Basu observed that it is well settled that the expression "cause of action" means that bundle of facts which the petitioner must prove, if traversed to entitle him to a judgment in his favour. Having given such a wide interpretation to the expression Ahmadi, J. (as the learned Chief Justice then was) speaking for M.N.Venkatachaliah, C.J. and B.P. Jeevan Reddy, J., utilized the opportunity to caution the High courts against transgressing into the jurisdiction of the other High Courts merely on the ground of some insignificant event connected with the cause of action taking place within the territorial limits of the High Court to

which the litigant approaches at his own choice or convenience. The following are such observations. (SCC p. 722 para 12)

> "If an impression gains ground that even in cases which fall outside the territorial jurisdiction of the court, certain members of the court would be willing to exercise jurisdiction on the plea that some event however trivial and unconnected with the cause of action had occurred within the jurisdiction of the said court, litigants would seek to abuse the process by carrying the cause before such members giving rise to avoidable suspicion. That would lower the dignity of the institution and put the entire system to ridicule. We are greatly pained to say so but if we do not strongly deprecate the growing tendency we will, we are afraid, be failing in our duty to the institution and the system of administration of justice. We do hope that we will not have another occasion to deal with such a situation."

The Apex Court had again explained the term "cause of action" in **Kusum Ingots & Alloys Ltd. Vs. Union of India and another**, (2004)6 SCC 254 with reference to Article 226(2) of the Constitution of India. Their Lordships have held as under:

> "Cause of action implies a right to sue. The material facts which are imperative for the suitor to allege and prove constitute the cause of action. Cause of action is not defined in any statute. It has, however, been judicially interpreted inter alia to mean that every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court. Negatively put, it would mean that everything which, if not proved, gives the defendant an immediate right to judgment, would be part of cause of action. Its importance is beyond any doubt. For every action, there has to be a cause of action, if not, the plaint or the writ petition, as the case may be, shall be rejected summarily.
>
> Clause (2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such government or authority or the residence of such person is not within those territories."

Section 20 (c) of the Code of Civil Procedure reads as under:

"20. Other suits to be instituted where defendants reside or cause of action arises.—subject to the limitations aforesaid, every suit shall be instituted in a court within the local limits of whose jurisdiction—

(a)-(b) xxx xxx xxx

(c) the cause of action, wholly or in part, arises."

Although in view of section 141 of the code of Civil Procedure the provisions thereof would not apply to writ proceedings, the phraseology used in Section 20(c) of the Code of Civil Procedure and clause (2) of Article 226, being in pari material, the decisions of this Court rendered on interpretation of Section 20 (c) CPC shall apply to the writ proceedings also. Before proceeding to discuss the matter further it may be pointed out that the entire bundle of facts pleaded need not constitute a cause of action as what is necessary to be proved before the petitioner can obtain a decree is the material facts. The expression material facts is also known as integral facts.

Keeping in view the expressions used in clause (2) of Article 226 of the Constitution of India, indisputably even if a small fraction of cause of action accrues within the jurisdiction of the Court, the Court will have jurisdiction in the matter.

In Chand Kour v. Partab Singh it was held:)(1A pp.157-58)

"The cause of action has no relation whatever to the defence which may be set up by the defendant, nor does it depend upon the character of the relief prayed for by the plaintiff. It refers entirely to the grounds set forth in the plaint as the cause of action, or, in other words, to the media upon which the plaintiff asks the court to arrive at a conclusion in his favour."

This Court in Oil & Natural Gas Commission v. Utpal Kumar Basu held that the question as to whether the court has a territorial jurisdiction to entertain a writ petition, must be arrived at on the basis of averments made in the petition, the truth or otherwise thereof being immaterial.

This Court in Oil and Natural Gas Commission case held that all necessary facts must form an integral part of the cause of action. It was observed :(SCC p. 719, para 8)

"So also the mere fact that it sent fax messages from Calcutta and received a reply thereto at Calcutta would not constitute an integral part of the cause of action."

In State of Rajsthan v. Swaika Properties this Court opined that mere service of a notice would not give rise to any cause of action unless service of notice was an integral part of the

cause of action. The said decision has also been noticed in Oil and Natural Gas Commission. This Court held: (SCC p. 223, para 8)

"The answer to the question whether service of notice is an integral part of the cause of action within the meaning of Article 226(2) of the Constitution must depend upon the nature of the impugned order giving rise to a cause of action."

In Aligarh Muslim University v. Vinay Engg. Enterprises (P) Ltd. This Court lamented: (SCC p. 711, para 2)

"2. We are surprised, not a little, that the High Court of Calcutta should have exercised jurisdiction in a case where it had absolutely no jurisdiction. The contracts in question were executed at Aligarh, the construction work was to be carried out at Aligarh, even the contracts provided that in the event of dispute the Aligarh court alone will have jurisdiction. The arbitrator was from Aligarh and was to function there. Merely because the respondent was a Calcutta-based firm, the High Court of Calcutta seems to have exercised jurisdiction where it had none by adopting a queer line of reasoning. We are constrained to say that this is a case of abuse of jurisdiction and we feel that the respondent deliberately moved the Calcutta High court ignoring the fact that no part of the cause of action had arisen within the jurisdiction of that Court. It clearly shows that the litigation filed in the Calcutta High Court was thoroughly unsustainable."

In Union of India vs. Adani Exports Ltd. It was held that in order to confer jurisdiction on a High Court to entertain a writ petition it must disclose that the integral facts pleaded in support of the cause of action do constitute a cause so as to empower the Court to decide the dispute and the entire or a part of it arose within its jurisdiction.

Recently, in National Textile Corpn. Ltd. V. Haribox Swalram a Division Bench of this Court held: (SCC p. 797, para 12.1)

"12.1. As discussed earlier, the mere fact that the writ petitioner carries on business at Calcutta or that the reply to the correspondence made by it was received at Calcutta is not an integral part of the cause of action and, therefore, the Calcutta High Court had no jurisdiction to entertain the writ petition and the view to the contrary taken by the division Bench cannot be sustained. In view of the above findings, the writ petition is liable to be dismissed."

The facts pleaded in the writ petition must have a nexus on the basis whereof a prayer can be granted. Those facts which have nothing to do with the prayer made therein cannot be said to give rise to a cause of action which would confer jurisdiction on the Court.

Passing of legislation by itself in our opinion does not confer any such right to file a writ petition unless a cause of action arises therefore.

A distinction between a legislation and executive action should be borne in mind while determining the said question.

A parliamentary legislation when it receives the assent of the President of India and is published in the Official Gazettle, unless specifically excluded, will apply to the entire territory of India. If passing of legislation gives rise to a cause of action, a writ petition questioning the constitutionality thereof can be filed in any High Court of the country. It is not so done because a cause of action will arise only when the provisions of the Act or some of them which were implemented shall give rise to civil or evil consequences to the petitioner. A writ court, it is well settled, would not determine a constitutional question in a vacuum.

The Court must have the requisite territorial jurisdiction. An order passed on a writ petition questioning the constitutionality of a parliamentary Act, whether interim or final keeping in view the provisions contained in clause (2) of Article 226 of the Constitution of India, will have effect throughout the territory of India subject of course to the applicability of the Act."

The expression "cause of action" wholly or in part has been explained by the Hon'ble Supreme Court in **Commissioner of Commercial Taxes Ranchi and another v. Swarn Rekha Cokes and Coals (P) Ltd. And others,** (2004)6 SCC 689 as under:

> "We shall first dealt with the submission urged on behalf of the appellant in Civil Appeal No.7798/2002 that the High Court of Judicature at Patna had no jurisdiction to entertain the writ petition and issue a Writ of Mandamus to the State of Jharkhand. We have earlier noticed that though the State of Jharkhand was not a party in the writ petition filed before the High Court at Patna, after a learned Single Judge of the High Court allowed the writ petition and granted the relief prayed for, the Commissioner of Commercial Taxes, Ranchi, Jharkhand State preferred a Letters Patent Appeal impugning the judgment and order of the learned Single Judge. In the Letters Patent Appeal, no objection was taken to the jurisdiction of the Patna High Court to entertain the writ petition. Moreover, as submitted by Mr. Parasaran, it cannot be said that the entire cause of action was in the State of Jharkhand because the notification of the State of Bihar issued under section 7(3)(b) of the Bihar Finance Act 1981 formed the basis on which the respondents

> founded their claim. This, therefore, necessarily formed a part of the cause of action and the respondents had to satisfy the Court that the aforesaid notification supported their claim for exemption from payment of sales tax on the purchase of raw materials. No doubt, in these circumstances the State of Jharkhand ought to have been made a party-respondent. This, however, is of no consequence now in view of the fact that the State of Jharkhand itself sought to prefer an appeal against the order of the learned Single Judge and in fact preferred a Letters Patent Appeal and contested the claim of the respondents. It did not object to the jurisdiction of the High Court at Patna to entertain the writ petition. Since a part of the cause of action lay in the State of Bihar, it cannot be disputed that the High Court at Patna also had the jurisdiction to entertain the writ petition. The objection that the State of Jharkhand was not a party in the said writ petition is not of much significance now since the State itself preferred an appeal and contested the case of the writ petitioners. Moreover, this objection as to the jurisdiction cannot be raised in Civil Appeal No.2450/2003 since in that case the State of Bihar itself had refused to grant the benefit of exemption to the appellant therein. So far as Civil Appeal No.3765/2003 is concerned, the judgment has been rendered by the High Court of Jharkhand at Ranchi. Since common questions arise in all these appeals, we consider it appropriate to decide the questions that arise in all these appeals, particularly, when we find that a part of the cause of action lay in the State of Bihar and consequently, the High Court at Patna had jurisdiction to entertain the writ petition and grant relief. We, therefore, reject the objection raised by the State of Jharkhand on the ground of lack of jurisdiction of the High Court at Patna to entertain the writ petition."

The Apex Court has held in **National Textile Corpn. Ltd., and others v. Haribox Swalram and others,** (2004)9 SCC 786 that only those facts give rise to a cause of action within a court's territorial jurisdiction which have a nexus or relevance with the lis that is involved in the case. The Apex Court has held as under :

"Under Clause (2) of Article 226 of the Constitution, the High Court is empowered to issue writs, orders or directions to any Government, authority or person exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories. Cause of action as understood in the civil proceedings means every fact which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. To put it in a different way, it is bundle of facts which taken with law applicable to them, gives the plaintiff a right to relief against the defendant. In Union of India v. Adani Exports Ltd. AIR 2002 SC 126 in the context of clause (2) of Article 226 of the Constitution, it has been explained that each and every fact pleaded in the writ petition does not ipso facto lead to the conclusion that those facts give rise to a cause of action within the Court's territorial jurisdiction unless those facts pleaded are such which have a nexus or relevance with the lis that is involved in the case. Facts which have no bearing with the lis or dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction on the Court concerned. A similar question was examined in State of Rajasthan v. M/s Swaika Properties AIR 1985 SC 1289. Here certain properties belonging to a company which had its registered office in Calcutta were sought to be acquired in Jaipur and a notice under Section 52 of the Rajasthan Urban Improvement Act was served upon the company at Calcutta. The question which arose for consideration was whether the service of notice at the head office of the company at Calcutta could give rise to a cause of action within the State of West Bengal to enable the Calcutta High Court to exercise jurisdiction in a matter where challenge to acquisition proceedings conducted in Jaipur was made. It was held that the entire cause of action culminating in the acquisition of the land under Section 152 of the Rajasthan Act arose within the territorial jurisdiction of the Rajasthan High Court and it was not necessary for the company to plead the service of notice upon them at Calcutta for grant of appropriate writ, order or direction under Article 226 of the Constitution for quashing the notice issued by the Rajasthan Government under Section 52 of the Act. It was thus held that Calcutta High Court had no jurisdiction to entertain the writ petition."

The expression ‘cause of action’ wholly or in part has been explained by the Hon’ble Supreme Court in **Om Parkash Srivastva vs. Union of India and another,** (2006)6 SCC 207. The Apex Court has held that the High Court will have jurisdiction if cause of action wholly or in part arises within the territorial limits of its jurisdiction even though the seat of Govt. or authority or residence of person against whom the direction, order or writ is sought to be issued is not within the said territory. Their Lordships have held as under:

> “6. Clause (2) of Article 226 of the Constitution is of great import importance. It reads as follows:
>
> "(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories."
>
> The question whether or not cause of action wholly or in part for filing a writ petition has arisen within the territorial limits of any High Court has to be decided in the light of the nature and character of the proceedings under Article 226 of the Constitution. In order to maintain a writ petition a writ petitioner has to establish that a legal right claimed by him has prima facie either been infringed or is threatened to be infringed by the respondent within the territorial limits of the Court's jurisdiction and such infringement may take place by causing him actual injury or threat thereof.
>
> Two clauses of Article 226 of the Constitution on plain reading give clear indication that the High Court can exercise power to issue direction, order or writs for the enforcement of any of the fundamental rights conferred by Part III of the Constitution or for any other purpose if the cause of action wholly or in part had arisen within the territories in relation to which it exercises jurisdiction notwithstanding that the seat of the Government or authority or the residence of the person against whom the direction, order or writ is issued is not

within the said territories. (See Oil and Natural Gas Commission v. Utpal Kumar Basu and Ors. (1994 (4) SCC 711).

By "cause of action" it is meant every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. In other words, a bundle of facts, which it is necessary for the plaintiff to prove in order to succeed in the suit. (See Bloom Dekor Ltd. v. Subhash Himatlal Desai and Ors. (1994 (6) SCC 322).

In a generic and wide sense (as in Section 20 of the Civil Procedure Code, 1908) "cause of action" means every fact, which it is necessary to establish to support a right to obtain a judgment. (See Sadanandan Bhadran v. Madhavan Sunil Kumar (1998 (6) SCC 514).

It is settled law that "cause of action" consists of bundle of facts, which give cause to enforce the legal inquiry for redress in a court of law. In other words, it is a bundle of facts, which taken with the law applicable to them, gives the plaintiff a right to claim relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action would possibly accrue or would arise. (See South East Asia Shipping Co. Ltd. v. Nav Bharat Enterprises Pvt. Ltd. and others. (1996 (3) SCC 443).

The expression "cause of action" has acquired a judicially settled meaning. In the restricted sense "cause of action" means the circumstances forming the infraction of the right or the immediate occasion for the reaction. In the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but also the infraction coupled with the right itself. Compendiously, as noted above the expression means every fact, which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Every fact, which is necessary to be proved, as distinguished from every piece of evidence, which is necessary to prove each fact, comprises in "cause of

action". (See Rajasthan High Court Advocates' Association v. Union of India and Ors. (2001 (2) SCC 294).

The expression "cause of action" has sometimes been employed to convey the restricted idea of facts or circumstances which constitute either the infringement or the basis of a right and no more. In a wider and more comprehensive sense, it has been used to denote the whole bundle of material facts, which a plaintiff must prove in order to succeed. These are all those essential facts without the proof of which the plaintiff must fail in his suit. (See Gurdit Singh v. Munsha Singh (1977 (1) SCC 791).

The expression "cause of action" is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a court or a tribunal; a group of operative facts giving rise to one or more bases of suing; a factual situation that entitles one person to obtain a remedy in court from another person. (See Black's Law Dictionary). In Stroud's Judicial Dictionary a "cause of action" is stated to be the entire set of facts that gives rise to an enforceable claim; the phrase comprises every fact, which if traversed, the plaintiff must prove in order to obtain judgment. In "Words and Phrases" (4th Edn.) the meaning attributed to the phrase "cause of action" in common legal parlance is existence of those facts, which give a party a right to judicial interference on his behalf. (See Navinchandra N. Majithia v. State of Maharashtra and Ors. (2000 (7) SCC 640).

In Halsbury Laws of England (Fourth Edition) it has been stated as follows:

"Cause of action has been defined as meaning simply a factual situation the existence of which entitles one person to obtain from the Court a remedy against another person. The phrase has been held from earliest time to include every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which a defendant would have a right to traverse. 'Cause of action' has also been taken to mean that particular act on the part of the defendant which gives the plaintiff his cause of complaint, or the subject matter of grievance founding the action, not merely the technical cause of action".

In view of the above discussion this court has jurisdiction to adjudicate this writ petition since part of cause of action had arisen within the territorial jurisdiction of this Court.

The Court had also not reserved the liberty at the time of admission of this petition to the respondents to take up the plea of territorial jurisdiction at the time of hearing. Accordingly this Court will not take any countenance of this objection of territorial jurisdiction at the time of hearing.

The upshot of the above discussion is that there was (i) violation of the principles of natural justice;(ii)no regular enquiry has been instituted against the petitioner to find out the allegation contained in the complaint submitted by the wife of the petitioner; (iii) the procedure as prescribed under Rules 20, 21 and 22 of the Border Security Force Rule, 1969 has not been complied with before the issuance of order dated 6.12.1999; (iv) the petitioner's reply to the show cause notice has not been considered by the Commandant before passing of order dated 6.12.1999 ; (v) the petitioner has not been supplied with the copy of letter dated 24.11.1999 furnished by the Senior Superintendent of Police, Kangra to the Commandant, 107 Bn. BSF and the Commandant has wrongly invoked Rule 26 of the Border Security Force Rules, 1969. The part of cause of action had also arisen within the territorial jurisdiction of this Court and thus the writ petition is maintainable before this Court.

For the foregoing reasons this writ petition is allowed. Annexure P-6 dated 6.12.1999 is quashed and set aside and the petitioner will be deemed to be in service of the Border Security Force with all consequential benefits i.e. arrears of salary, seniority, promotion etc.

June 12, 2007(g) **(Rajiv Sharma), J.**